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wherein the chromoplast particles are intact with at most only a fraction of said chromoplast particles being partially mechanically broken, and

wherein the coloring material has a soluble solids concentration below 5° Bx.

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REMARKS

New claim 44 is presently considered by undersigned to be roughly equivalent to claim 1 (Amended) as it appears in the amendment of March 30, 2001. Applicants would be agreeable to canceling one of these claims if the other is found to be allowable.

In an attempt to move prosecution forward, applicants now address three points raised in the first paragraph on page 2 of the Advisory Action of April 6, 2001.

1. Applicants do not understand the Examiner's reference to removing the phrase "comprising" from claim 1. The word comprising appears in line 2 of claim 1 (Amended) as it appears in the amendment of March 30, 2001. Moreover, there are many claims which do not contain the word "comprising".

With respect to changing "chromoplast particles comprising crystalline lycopene" to "chromoplast particles encapsulating crystalline lycopene", there should be no question that the chromoplast membrane does indeed encapsulate crystalline lycopene. In the prior art, the chromoplast membrane is largely

destroyed, whereas in the present invention it is largely retained.

2. The term "substantially" is often found in US patent claims, indeed so often that the term "substantially" is ubiquitous in US patent practice. Applicants request the Examiner to again read applicants' specification. Again, a key aspect of the present invention is retention of the chromoplast membrane, contrary to what occurs in the prior art. However, under present technology, it is impossible to make sure that every single chromoplast particle is intact. The vast majority of such chromoplast particles are intact, contrary to the prior art, and that is what "substantial intact" means.

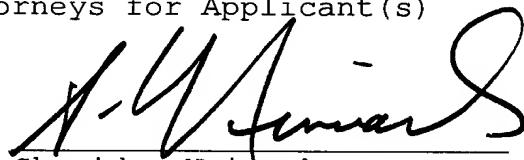
3. Those skilled in the art know very well what the "red color range" is. Indeed, even unskilled people know what is red and what is not red, unless those persons are color-blind.

Applicants request favorable reconsideration.

Respectfully submitted,

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